

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RAMON SAUL SILVA,

Plaintiff,

v.

TROY BACON, *et al.*,

Defendants.

Case No. 2:19-cv-00619-RAJ

ORDER ADOPTING MODIFIED  
REPORT AND  
RECOMMENDATION

The Court, having reviewed Plaintiff's and Defendants' objections to the Report and Recommendation ("Report") of Magistrate Judge Michelle L. Peterson (Dkt. ## 98, 99), objections and responses thereto, and the remaining record, hereby finds and

**ORDERS:**

- (1) In the Report, Judge Peterson determined that Defendants failed to "specifically address Plaintiff's request for scented oils in the First Amendment context." Dkt. # 96 at 19. In their objections to the Report, Defendants have since shown and persuaded the Court that there is indeed a legitimate penological interest in denying Plaintiff scented prayer oil. Dkt. # 99 at 2-4. To the extent that Judge Peterson "expresse[d] no opinion on Plaintiffs First Amendment claim as it pertains to scented oils," the Court now exercises its

- 1 discretion to consider new facts and argument and **MODIFIES** the Report.  
2 *See United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000). The Court  
3 holds that Defendants are entitled to summary judgment with respect to  
4 Plaintiff's First Amendment claim as it pertains to scented prayer oil.
- 5 (2) The Report (Dkt. # 96) as modified above is **ADOPTED**.
- 6 (3) Plaintiff's motions for partial summary judgment (Dkt. ## 39, 54) are  
7 **DENIED**.
- 8 (4) Defendants' motion for summary judgment (Dkt. # 73) is **GRANTED** with  
9 respect to all claims except for those pertaining to Plaintiff's request for  
10 scented prayer oil under the Religious Land Use and Institutionalized Persons  
11 Act ("RLUIPA").
- 12 (5) Plaintiff's amended complaint (Dkt. # 8) and this action are **DISMISSED with**  
13 **prejudice** with respect to all claims except those pertaining to Plaintiff's  
14 request for scented prayer oil under the RLUIPA.
- 15 (6) Defendants' motion for sanctions (Dkt. # 81) is **DENIED**, and Plaintiff's  
16 motion seeking a ruling on his dispositive motions (Dkt. # 90) is **DENIED as**  
17 **moot**.
- 18 (7) The Clerk is directed to send copies of this Order to Plaintiff, to counsel for  
19 Defendants, and to Judge Peterson.

20  
21 DATED this 17th day of August, 2020.

22  
23   
24

25 The Honorable Richard A. Jones  
26 United States District Judge  
27  
28